

RESOLUTION NO. 2008-183

A RESOLUTION OF THE LODI CITY  
COUNCIL APPROVING AMENDMENT TO  
THE FIRE MID-MANAGEMENT STATEMENT  
OF BENEFITS

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve an amendment to the Fire Mid-Management Statement of Benefits to include the following:

- Effective the first pay period, in which July 1, 2008, falls, represented employees shall receive a 10.5% salary adjustment.
- Effective January 1, 2009, salaries will be adjusted by a minimum 3.5% and a maximum of 5.0% based on the Consumer Price Index (CPI-W) for San Francisco wage earners.
- Amend Performance Incentive Program to Additional Compensation/Loyalty Incentive program.
- Amend appeal process for non-disciplinary actions to include mediation upon which Fire Mid-Management will incur any costs associated therein.

Dated: September 3, 2008

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I hereby certify that Resolution No. 2008-183 was passed and adopted by the Lodi City Council in a regular meeting held September 3, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,  
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk

**CITY OF LODI**

**FIRE MID-MANAGEMENT**  
**STATEMENT OF BENEFITS**

**JULY 2008**

## **TABLE OF CONTENTS**

	<u>PAGE #</u>
Article I	Salary 3
Article II	Right of Return 3
Article III	Deferred Compensation 3
Article IV	Flexible Spending Account 3
Article V	Chiropractic 3
Article VI	Education Incentive 4
Article VII	Additional Compensation/ Loyalty Program 4
Article VIII	Overtime 5
Article IX	Retirement 6
Article X	Vacation Leave 6
Article XI	Administrative Leave 7
Article XII	Holidays 7
Article XIII	Sick Leave 7
Article XIV	Sick Leave Conversion 7
Article XV	Survivors Benefits 9
Article XVI	Executive Physical Examinations 9
Article XVII	Medical Insurance 9
Article XVIII	Dental Insurance 10
Article XIX	Vision Insurance 10
Article XX	Life Insurance 10
Article XXI	Uniform Allowance 10
Article XXII	Leaves and Leaves of Absence 10
Article XXIII	Tuition Reimbursement 11
Article XXIV	56-Hour Work Week 11
Article XXV	Probation 12
Article XXVI	Personal Liability 12
Article XXVII	Grievance Procedure 13
Article XXVIII	Disciplinary Procedure 13
Article XXIX	City Rights 17
Article XXX	Department Sanctioned Teams 18
SCHEDULE A	Salary Schedule 19

**FIRE MID-MANAGEMENT CLASSIFICATIONS**

Fire Division Chief  
Fire Battalion Chief

**ARTICLE I - SALARY**

- 1.1 Effective the pay period in which July 1, 2008 falls, represented employees will receive a salary adjustment equal to 10.5%.
- 1.2 Effective the first pay period in which January 1, 2009 falls, represented employees will receive a cost of living adjustment based upon the consumer price index (CPI-W), San Francisco-Oakland-San Jose. The increase will be no less than 3.5% and no greater than 5% and calculated using the most recent twelve month average that is available and issued by the Department of Labor.
- 1.3 The City of Lodi and the Fire Mid-Management group agree that the term of this agreement is July 1, 2008 to December 31, 2009.

**ARTICLE II - RIGHT OF RETURN**

- 2.1 The City agrees that employees reserve the right to return and discuss with the City, at any time, those issues pertaining to the terms and conditions established by Resolution 2003-132 approved by the City Council on July 16, 2003.

**ARTICLE III - DEFERRED COMPENSATION**

- 3.1 Employees may participate in the City's Deferred Compensation Plan.
- 3.2 The City matches up to a maximum of 3.0% of base salary

**ARTICLE IV - FLEXIBLE SPENDING ACCOUNT**

- 4.1 Employees shall have the option of participating in the Flexible Spending Account (Section 125 Plan). Employees may elect to participate in;
  - a) Premium Conversion
  - b) Non-reimbursed Health Care
  - c) Dependent Care Reimbursement
- 4.2 Elections for the calendar year will be made each December, or if a change in family status occurs. Money not used by the end of each calendar year will be forfeited by the employee.

**ARTICLE V - CHIROPRACTIC**

- 5.1 Chiropractic services may be received by employees and dependents through a chiropractic insurance plan. This benefit allows up to a maximum of 40 visits per calendar year. Co-payments for services are \$10.00.

**ARTICLE VI - EDUCATION INCENTIVE**

- 6.1 Education incentives will be available to eligible employees for specified degrees, certifications, and licenses.
- 6.2 Associate of Arts Degree - \$50.00 per month if the :
- a) AA Degree is in Fire Science of related field;
  - b) AA Degree is in a non-related field with a Fire Science Certificate from an accredited institution.
  - c) Employee has AA Degree and is actively pursuing a Bachelor of Arts degree

Or:

Bachelor of Arts Degree - \$100.00 per month.

If an employee possesses a BA degree, he/she will receive a maximum of \$100.00 under Section 6.2

- 6.3 Employees will receive education incentive pay for the following certifications:

Certified Chief Officer	\$100.00 per month
Emergency Medical Technician	\$50.00 per month
Certified Fire Officer	\$50.00 per month
Certified Fire Investigator	\$12.50 per month
Certified Fire Instructor	\$25.00 per month
Certified Fire Prevention Officer	\$25.00 per month
Certified Public Education Officer	\$12.50 per month
Certified Fire Chief	\$25.00 per month

- 6.4 Employees shall receive a maximum of \$275.00 per month for education incentives. However, an additional \$25.00 per month may be earned if the employee possesses a Hazardous Materials Specialist/Technician Certificate.

**ARTICLE VII - ADDITIONAL COMPENSATION LOYALTY PROGRAM**

- 7.1 After completing ten years of service with the Lodi Fire Department, employees shall receive an annual loyalty compensation amount of \$1,500 in November of the year following completion of ten years of service and each year thereafter until completing twenty years of service with the Lodi Fire Department. Employees who have completed twenty years of service with the Lodi Fire Department will receive an annual loyalty compensation amount of \$3,000 on November of the year following completion of twenty full years of service and each year thereafter.

For the purposes of this article, all employees who as of October 31<sup>st</sup> meet the service level requirements (either ten full years or twenty full years from the first day of the month in which they started their employment with the City of Lodi Fire Department) shall receive the loyalty compensation associated with their years of service with the Lodi Fire Department.

**ARTICLE VIII - OVERTIME**

8.1 Due to the fact that the classifications in this bargaining unit are deemed exempt from the overtime requirements of the Fair Labor Standards Act (FLSA), the following special provisions for the payment of overtime will apply. Employees shall be compensated for overtime at the time and one-half rate for time worked due to emergencies. Overtime for Fire non-shift employees is based on a 40 hour work week. Overtime for Fire shift employees is based upon a 56 hour work week. Emergencies shall be determined by the appropriate department head and include but are not limited to such events as:

- + Major storm damage requiring the dispatching of additional crews;
- ♦ The necessity to cover scheduled shifts;
- ♦ Direct supervision of crews assigned to work during normal days off to accommodate the public;
- ♦ Break down of equipment and/or systems requiring the presence of the mid-manager in order to restore service.

8.2 Overtime pay shall not be paid for the following:

- ♦ Staff meetings
- ♦ Special projects
- ♦ Conferences and seminars - except as noted below
- ♦ Appearances before City Council and commissions,
- ♦ Public information presentations,
- ♦ Activities involved with the completion of normal activities or programs such as budgets, inventory, annual financial closings, labor negotiations, and recreation programs.

8.3 All overtime must be approved by the department head. Any deviations from these guidelines must be approved in advance by the department head and the City Manager.

8.4 Employees may accrue compensatory time in lieu of overtime pay. The accrual rate for compensatory time shall be one and one-half hours for each hour worked.

**8.5** No more than one hundred forty-four (144) hours of compensatory time may be carried on the books at any time.

8.6 Upon separation, the employee will be paid at the employee's current hourly rate or the average of the last three years, whichever is higher for the remaining compensatory balance.

8.7 Upon promotion into a Mid-Management position only previously accrued compensatory time must be paid or used prior to the promotion.

8.8 Fire Division Chief is considered an exempt classification not subject to any of the exceptions for overtime specified in this section. However, for the purposes of and in recognition of San Joaquin County Strike Team Agreements, Division Chiefs and Battalion Chiefs will be

allowed to participate in Strike Team Operations and be eligible for overtime as provided for in said agreements.

### **ARTICLEIX - RETIREMENT**

9.1 The City of Lodi provides retirement benefits through the Public Employees Retirement System. Employees shall receive the following retirement benefits.

<b>Safety</b>	3% @ 50 plan	<ul style="list-style-type: none"> <li>• 1957 Survivors Benefit</li> <li>• 1959 Survivors Benefit -3<sup>rd</sup> Level</li> <li>• Employee's 9% paid by City</li> <li>• Credit for Unused Sick Leave</li> <li>• Military Service Credit as Public Service</li> <li>• Single Highest Year</li> </ul>
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### **ARTICLE X - VACATION LEAVE**

10.1 Employees hired prior to July 1, 1994 shall receive the following vacation benefits:

#### **Forty Hour Work Week:**

##### Beginning with:

Date of Hire:	3.08 hours per pay period	(10 days per year)
6th year	4.62 hours per pay period	(15 days per year)
12th year	5.23 hours per pay period	(17 days per year)
15th year	6.16 hours per pay period	(20 days per year)
21st year	6.47 hours per pay period	(21 days per year)
22nd year	6.78 hours per pay period	(22 days per year)
23rd year	7.09 hours per pay period	(23 days per year)
24th year	7.40 hours per pay period	(24 days per year)
25th year	7.71 hours per pay period	(25 days per year)

#### **Shift (56 hour work week) Employees:**

##### Beginning with:

Date of Hire:	5.54 hours per pay period
6th year	8.31 hours per pay period
15th year	11.08 hours per pay period
25 <sup>th</sup> year/above	13.85 hours per pay period

10.2 Vacation leave shall be used in increments of not less than quarter hours. Vacation may not be carried over to the subsequent year in excess of the amount earned in a calendar year unless authorized by the City Manager.

**ARTICLE XI - ADMINISTRATIVE LEAVE**

- 11.1 Employees will be given 80 hours of administrative leave (or 120 hours for shift personnel) per calendar year. Leave shall be taken in increments of not less than quarter hours. Balances must be used prior to December 30 or they will be lost.
- 11.2 New employees or employees becoming eligible due to a promotion receive administrative leave on a prorated basis. Non-shift employees will be granted eight hours leave for each full calendar month remaining in the calendar year with a maximum of 80 hours. Shift employees will be granted twelve hours leave for each full calendar month remaining in the calendar year with a maximum of 120 hours.
- 11.3 Employees separating mid-year will receive a cash pay out for unused Administrative Leave on a prorated basis in accordance with 10.2.
- 11.4 Employees are eligible to cash out up to half of their current Administrative Leave balance in any calendar year except in the months of May and June. A request to cash out Administrative Leave must be in writing and submitted to the Finance Department.

**ARTICLE XII - HOLIDAYS**

- 12.1 Effective January 2004, employees shall receive either 108 hours (non-shift) or 156 hours of holiday leave to compensate for the addition of Martin Luther King, Jr. birthday as a fixed holiday.
- 12.2 Holiday hours shall be taken in increments of not less than quarter hours and may not be carried into the following calendar year. Each year, the pay period in which December 1 falls, employees will be paid for the unused holidays at the straight-time rate as of December 31 of the year in which the holidays were earned.

**ARTICLE XIII - SICKLEAVE**

- 13.1 Sick Leave is earned at the rate of 3.70 hours per pay period for employees working a 40 hour work week and 5.54 hours for shift (56 hour work week) employees. There is no limit on the amount that can be accumulated. Total sick leave accrued is 12 days per year. Sick leave shall be taken in increments of not less than quarter hours.

**ARTICLE XIV - SICK LEAVE CONVERSION**

- 14.1 Employees hired prior to July 1, 1994, after 10 years with the City and only upon retirement, may convert their accumulated sick leave time to medical insurance premiums or cash under the following options:

**OPTION #1- "Bank"**

The number of accumulated hours shall be reduced by 16-2/3% and the remaining balance converted into days. The days are then multiplied by the current monthly premium being paid for the employee and, if applicable, his/her dependents. Fifty percent of that dollar amount will be placed into a "bank" to be used for medical insurance premiums for the employee, and if applicable, his/her dependents. For each year of employment over 10 years, 2.5% will be added to the 50% used in determining



"bank" amount. Total premiums shall be paid from the Bank until its depletion, at which time the conversion benefit stops.

Employees may also use their banks money to purchase Dental and/or Vision Insurance at the current premiums until their bank is depleted.

OPTION #2 - "Conversion"

The number of accumulated hours shall be multiplied by 50% and converted to days. The City shall pay one month's premium for employee and dependents for each day after conversion. For each year of employment in excess of 10 years, 2.5% shall be added to the 50% before conversion. The amount of premium paid shall be the same as the premium paid by the City at the time of retirement. Any differences created by an increase in premiums must be paid for by the employee.

OPTION #3 - "Cash-Out"

A retiring employee will be able to choose a cash pay-off of accumulated sick leave at the rate of 30% of base pay per hour.

OPTION #4 – "Service Credit"

A retiring employee will be able to convert unused sick leave to service credit for CalPERS retirement purposes.

- 14.2 Employees hired after July 1, 1994 will not have the option of converting unused sick leave time into medical insurance premiums or cash as referenced in OPTION 1-3. The only option available to these employees is OPTION #4 "PERS CREDIT". If an individual previously qualified for the sick leave conversion option while in the United Professional Firefighters unit, they will retain their eligibility if promoted to Fire Mid-Management with an effective date of December 6, 1995.
- 14.3 In the event an active employee dies before retirement and that employee is vested in the Sick Leave Conversion program (10 years) the surviving dependents have an interest in one-half (1/2) the value of the bank as calculated in section 13.I.
- 14.4 The City shall allow a surviving dependent of a retiree enrolled in the Sick Leave Conversion program to purchase medical insurance at the employee only premium for the same period as if the retiree had not died.
- 14.5 A retiree or surviving dependent, upon expiration of City-paid coverage, if any, has the option of purchasing at the prevailing rate additional medical insurance for an unlimited amount of time.
- 14.6 Out of area retirees may receive reimbursement for medical insurance premiums up to the City's liability as specified in Section 13.1; Option #2.
- 14.7 Only one City of Lodi employee may carry dependent coverage for another City employee, therefore, upon retirement the employee may re-enroll as an individual into the health plan in order to take advantage of the Sick Leave Conversion program.

- 14.8 A retiree or surviving dependent may purchase dental and vision insurance at the City group rate through the Sick Leave Conversion Bank option.

#### **ARTICLE XV - SURVIVORS BENEFITS**

- 15.1 The City shall pay 100% of premiums for health and dental benefits described in this MOU for the Surviving spouse and any minor children of any member of the Fire Mid-Management group who is killed or dies during the performance of official duties. Premiums will be paid at the current rate in effect at the time of the member's death. Premiums will continue to be paid by the City until such time such time as the surviving spouse is covered by other insurance or remarries, and for dependent children of the member killed in the line of duty until such time as either:

1. the children become adults, or
2. the children are covered under other alternative medical coverage provided by and through the surviving spouse or the person who he/she remarries.

#### **ARTICLE XVI - EXECUTIVE PHYSICAL EXAMINATION**

- 16.1 Employees may elect to receive an executive physical examination in accordance with the provisions of the City's medical insurance plan to include any and all of the following procedures as applicable and as deemed necessary by the employee's physician:

- A complete office examination
- Urinalysis
- Pap smear
- EKG (resting)
- An executive blood panel
- Mammogram
- Chest X-ray

- 16.2 Employees shall be reimbursed for costs not covered by the medical insurance for the procedures referenced in 14.1 only. Any additional tests judged necessary shall be the responsibility of the employee. Employees must submit all related receipts, attached to a claim voucher, to the Finance Department for reimbursement.

#### **ARTICLE XVII - MEDICAL INSURANCE**

- 17.1 All employees are offered medical insurance for themselves and dependents through Cal PERS-Medical Plans. City shall pay 100% premium for employee only up to the highest HMO available in our geographical area. Effective as soon as administratively possible, employees will be responsible for a share of cost of their medical premiums as follows: a) Employees with no dependents - \$0.00 monthly, b) Employees with one dependent - \$80.00 monthly, c) Employees with more than one dependent - \$104.00 monthly. Employees selecting a PPO or other available plan shall also be responsible for the difference in cost between the highest HMO and the selected plan, in addition to the specified employee share of cost.. Should an employee decide to elect single medical coverage, the City of Lodi will deposit \$25.00 per pay period into the employees deferred compensation account. If no coverage is elected \$71.15 per pay period will be deposited into the employees deferred compensation account.

- 17.2 Only one City of Lodi employee may carry dependent coverage for another City employee. Co-payments incurred due to the loss of dual coverage will be reimbursed by the City of Lodi on a quarterly basis.

#### **ARTICLE XVIII - DENTAL INSURANCE**

- 18.1 Employees are provided fully paid family dental insurance.
- 18.2 Maximum benefits are \$1,000 for each family member enrolled into the dental plan, per calendar year. There is a \$25 deductible plus co-insurance features.

#### **ARTICLE XIX - VISION INSURANCE**

- 19.1 Employees are provided with family vision care insurance through *Vision Service Plan*. Services and amount of coverage are outlined in the VSP Summary of Benefits.

#### **ARTICLE XX - LIFE INSURANCE**

- 20.1 Employees are provided with *term life and accidental death/dismemberment* insurance at a benefit rate of \$17,000. This benefit decreases after age 70 on a sliding scale, depending on age.
- 20.2 Employees are provided with \$100,000 of *accident insurance* while traveling on City business outside the City limits. Spouses are only covered while accompanying the City employee on City business, or while conducting business on behalf of the City.
- 20.3 Employees are also provided with a \$25,000 *accidental death* policy in the event of death resulting from a line-of-duty injury.

#### **ARTICLE XXI - UNIFORM ALLOWANCE**

- 21.1 The uniform allowance shall be \$800.00 per year, paid quarterly, as part of the last bi-weekly paycheck in the months of March, June, September, and December.

#### **ARTICLE XXII - LEAVES AND LEAVES OF ABSENCE**

- 22.1 Employees shall receive all leaves and leaves of absence in accordance with Federal and State mandates and City policies.
- 22.2 Family Medical Leave
- a) Family Medical Leave is available to employees upon reasonable request unless such request qualifies and an exception to eligibility for family medical leave, or that granting the leave would cause undue hardship.
  - b) Family Medical Leave is leave of absence up to a total of four (4) months from the date leave commenced within a 12-month period for the following reasons:
    - 1) Birth of a child of the employee and in order to care for such child or the placement of a child with an employee in connection with the adoption or foster care of child by an employee (such leave must be taken within the 12-month period following the child's birth or placement with employee); or

- 2) To care for a child, parent or spouse of the employee who has a serious health condition; or
  - 3) Because of a serious health condition that makes the employee unable to perform the functions of his/her position.
- c) The terms and conditions for leaves of absence without pay pertaining to the medical benefits are applicable to Family Medical Leave in accordance with the City of Lodi Administrative Policy and Procedure.

### **ARTICLE XXIII - TUITION REIMBURSEMENT**

23.1 Employees shall receive the following:

- 1) Tuition costs, up to a maximum of \$1,804 per fiscal year, to be paid upon the satisfactory completion of course work.
- 2) The full cost of books required for courses taken.

The maximum amount reimbursed is based on fees for two courses of study at California State University Sacramento. This maximum amount will be updated annually. A fiscal year is the period between July 1 and June 30. The final date of class shall determine the fiscal year in which that course falls.

This section will be applied toward registration fees at an accredited College or University. Course work must be part of a program of study toward obtaining an Associate of Arts, Bachelors, or any higher degree.

### **ARTICLE XXIV - 56-HOUR WORK WEEK**

- 24.1 The work schedule will be a schedule of “56 hours per week” with three on-duty shifts in nine 24-hour periods. For purposes of the FLSA, it is mutually understood the City has declared a 27 day work cycle.
- 24.2 If an employee assigned to a 56-hour work week schedule terminates his/her employment in the middle of a two week payroll cycle, the employee’s pay for that cycle shall be computed by multiplying the number of days between the first day of the payroll cycle and the last shift worked by eight (8) hours or the number of actually worked in that payroll cycle, whichever is greater.
- 24.3 It is agreed that if the work schedule of a Fire Mid-Management employee is a 40-hour week, then all holiday, vacation, and sick leave benefits are based on a 40-hour week rather than a 56-hour week.
- 24.4 In order to convert the hours for employees that move from a 40 hour work week to a 56-hour work week, the following formulas will be applied:

For conversion of Vacation:

From 40 to 56 hours.. .....Multiply by 1.8

From 56 to 40 hours.. .....Multiply by .555556

For conversion of Holiday and Sick Leave and Comp Time:

From 40 to 56 hours.. .....Multiply by 1.5

From 56 to 40 hours.. .....Multiply by .666667

#### **ARTICLE XXV - PROBATION**

25.1 Employees have a probationary period of one year. During probation, new hires have the same rights and privileges as regular employees, except that:

- City and employee may mutually agree to an extension of the probationary period up to six additional months.
- Termination cannot be grieved.

New hires and promotional appointments shall be eligible for a merit increase at the completion of probation. An employee who has been promoted and rejected during the probationary period from the position shall be entitled to the rights specified in Rules for Personnel Administration, Article XI, Probationary Period, Section 11.04.

#### **ARTICLE XXVI - PERSONAL LIABILITY**

26.1 Employees shall be indemnified and held harmless by the City against all costs, legal expenses, and liability arising out of decisions made in their capacity for the City of Lodi and/or from any cause of action for property damage, or damages for personal injury, including death, sustained by person(s) as a result of a decision made in their capacity, except that:

- A. The City is not required to but may provide for the defense of an action or proceeding brought against an employee or former employee if the City determines that:
  - 1. The act or omissions was not within the scope of their employment; or
  - 2. They acted or failed to act because of actual fraud, corruption, or actual malice; or
  - 3. The defense of the action or proceeding by the City would create a conflict of interest between the City and the employee or former employee.
- B. The City is not required to but may pay any claim of judgment for punitive or exemplary damages under the following circumstances:
  - 1. The judgment is based on an act or omission of an employee or former employee acting within the course and scope of their employment as an employee of the City.
  - 2. At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the City.
  - 3. Payment of the claim of judgment would be in the best interests of the City.

**ARTICLE XXVII - GRIEVANCE PROCEDURE**

27.1 Disputes involving the following subjects shall be determined by the Grievance Procedures established herein:

- A. Interpretation or application of any of the benefits listed herein.
- B. Disputes as to whether a matter is proper subject for the Grievance Procedure.
- C. Disputes which may be of a “class action” nature filed on behalf of the employees or the City.

27.2 Class action Grievances shall be submitted in writing to the City Manager or vice versa.

27.3 **STEP ONE**

Discussion between the employee and the immediate supervisor, who will answer within fifteen work days. This step shall be taken within thirty days of the date of the action complained of, or the date the grievant became aware of the incident which is the basis of the grievance.

27.4 **STEP TWO**

If a grievance is not resolved in the initial step, then Step Two shall be a discussion between the employee, and the Department Head who shall answer within fifteen work days. This step shall be taken within fifteen work days of the date of the immediate Supervisor’s answer in Step One.

27.5 **STEP THREE**

If a grievance is not resolved in Step Two, Step Three shall be the presentation of the grievance, in writing, by the employee to the City Manager, who shall answer, in writing, within fifteen work days of receipt of the grievance. The City Manager’s decision shall be final and binding. Step Three shall be taken within fifteen work days of the date of the answer in Step Two.

27.6 **STEP FOUR**

If a grievance is not resolved by the City Manager or designee, mediation may be requested (and the City will enter into) by the Fire Mid-Management group, upon which they will incur any costs associated therein.

**ARTICLE XXVIII - DISCIPLINARY PROCEDURE**

28.1 Basis: The City may discipline any employee in City service. Discipline may include discharge, demotion, suspension, reduction in pay, or oral or written reprimand. Only regular employees shall have the right to hearing and appeal as described in this section.

28.2 FLSA Exempt Employees: With respect to employees in classification deemed exempt from the overtime requirements of the Fair Labor Standards Act (“FLSA”) disciplinary suspensions pursuant to this policy shall be administered in accordance with the salary basis test under the FLSA’s governing regulations.

28.3 Cause: Causes for discipline of any regular employee may include, but shall not be limited to the following:

- A. Improper or unauthorized use or abuse of sick leave.
- B. Excessive absenteeism that prevents reasonable availability for assigned duties.
- C. Absence without authorized leave; repeated tardiness to assigned work station; leaving assigned work without authorization; failure to report to work after a leave of absence has expired, or after a leave has been disapproved or revoked.
- D. Misconduct; willful or negligent violation of the personnel rules, resolutions, and/or other related ordinances including written departmental rules, regulations, and policies.
- E. Insubordination;
- F. Acceptance of gifts or gratuities in connection with or relating to the employee's duties.
- G. Conviction of a felony or misdemeanor involving moral turpitude. A plea or a verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude in deemed to be a conviction.
- H. Fraud or the submission of false information related to employment application, payroll, or any work-related record or report.
- I. Soliciting outside work for personal gain during the conduct of City business; engaging in outside employment for any business under contract with the City; or participating in any outside employment that adversely affects the employee's City work performance; or conducting personal business on City time.
- J. Discourteous treatment of the public or City employees or disorderly conduct on City property or on City business including fighting, or using profanity, intimidation, abusive or threatening language.
- K. Conduct that interferes with the reasonable management, operation and discipline of the City or any of its departments or divisions or failure to cooperate with superiors or fellow employees.
- L. Engaging in political activities while on duty, in uniform or using the authority associated with City employment.
- M. Violation or neglect of safety rules or practices.
- N. Behavior, either during or outside the duty hours, which is of such a nature that it causes discredit to the City or one of its operating services.
- O. Discrimination, including harassment, against other employees or members of the public on the basis of race, color, national origin, religious creed, ancestry, sex, sexual preference, marital status, age or physical handicap.
- P. Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform or complete assigned tasks or training, in a prompt, competent, and reasonable manner.

- Q. Refusal or inability to improve job performance in accordance with written or verbal direction after a reasonable trial period.
  - R. Refusal to accept and carry out reasonable and proper assignment from an authorized supervisor.
  - S. Possession or use of controlled substances or alcohol on City property and/or at the worksite.
  - T. Intoxication, intemperance, or incapacity due to the use of controlled substances or alcohol while on duty.
  - U. Failure to obtain or maintain possession of the minimum qualifications for the position.
  - V. Careless, negligent, or improper use of City property, equipment or funds, including unauthorized removal, or use for private purpose, or use involving damage or unreasonable risk of damage to property.
  - W. Unauthorized release or use of confidential information or official records.
  - X. Participation in an illegal strike, work stoppage, slowdown, or other job action against the City.
  - Y. Inability to perform the duties of his/her job.
  - Z. Dishonesty.
  - AA. Possession of firearms on the job.
  - BB. Sleeping on the job.
  - CC. Theft.
  - DD. Retaliation for actions protected by law.
  - EE. Failure to report loss of or damage caused to City equipment and/or facilities for which the employee was responsible.
  - FF. Threats of violence against City employees and/or City property.
- 28.4 Persons Authorized to Take Disciplinary Action: Employee discipline may be initiated by the City department head for cause against any employee under his/her supervision. Disciplinary actions in the form of termination or discharge shall be subject to final approval from the City Manager.
- 28.5 Notice (except in the case of oral or written reprimand): Notice of Intended Disciplinary Action shall be prepared in writing by the department head proposing the discipline and shall be served on the employee in person or by registered or certified mail. Notice shall be served prior to the action becoming effective; however, where circumstances require immediate removal of the employee from the workplace, notice shall be provided within two (2) working days from the date the employee is removed from the workplace. Employees so removed shall be placed on paid leave pending imposition of discipline. A copy of the Notice of Intended Disciplinary Action shall also be filed with the Human Resources Director. The written Notice of Intended Disciplinary Action shall contain the following information:



1. The specific type of disciplinary action;
2. The effective date of the action;
3. The specific reason(s) or cause(s) for the actions;
4. Notice that the employee may inspect copies of all materials upon which the action is based, and
5. Notice that the employee has the right to respond orally or in writing within ten (10) days to the department head initiating the disciplinary action. No hearing before the City Manager is available to review oral or written reprimands.

An employee who responds orally or in writing to the department head shall be entitled to meet in an informal conference with the department head and shall be given the opportunity to rebut the charges against him/her or to state any mitigating circumstances. In the case of oral or written reprimand, the department head's decision shall be final. In the case of discharge, demotion, suspension, or reduction in pay, the department head or other City designee shall hear and consider the facts presented by the employee and shall thereafter submit a written recommendation to the City Manager to either impose, rescind or modify the proposed disciplinary action. The recommended proposed disciplinary action shall also be served on the employee. The recommendation shall contain:

6. The specific type of disciplinary action;
  7. The specific reason(s) or cause(s) for the actions;
- 28.6 Final Notice of Disciplinary Action: Following review of the department head's recommendation and the determination by the City Manager, the City Manager shall prepare a Final Notice of Disciplinary Action, advising the employee of the action to be taken, its effective date, and the employee's appeal rights.
1. Disciplinary action shall become effective on the date stated in the Final Notice of Disciplinary Action, unless the date is otherwise extended by the City Manager.
  2. The City Manager shall file a copy of the Final Notice of Disciplinary Action with the Human Resources Director. The Final Notice of Disciplinary Action shall be delivered personally to the employee or shall be sent by registered or certified mail.
- 28.7 Appeal of Disciplinary Action: In the event of a demotion, suspension or dismissal, and the affected employee is not satisfied with the decision rendered by the City Manager, the employee may appeal the decision. The employee may appeal disciplinary decisions by filing a written appeal with the Human Resources Director within fifteen (15) work days following service of the Final Notice of Disciplinary Action. The written appeal shall contain a written reply to the charges against the employee and written request for an appeal hearing. The employee shall submit a copy of the appeal to the City Manager.
- 28.8 If an employee submits an appeal, the City shall refer the case to a neutral hearing officer selected through the California State Mediation and Conciliation Services to hear the appeal and submit an advisory decision to the City Manager. Selection of the hearing

officer shall be made by the parties' mutually selecting a list of 7 neutral hearing officers from the office of the California State Mediation and Conciliation Services. Absent mutual agreement on a name on the list, the parties will strike names from the list for final selection of the hearing officer. The selected hearing officer shall adhere to the following standard of review and hearing procedures:

1. The appeal hearing shall be informal and strict rules of evidence shall not apply.
2. The parties will have the right to present and cross-examine witnesses, issue opening and closing statements, and file written closing briefs. Witness testimony shall be under oath or affirmation.
3. The hearing officer may exclude testimony or evidence which he/she determines irrelevant or unduly repetitious.
4. Attendance at the appeal hearing shall be limited to those determined by the hearing officer to have a direct connection with the appeal. Witnesses normally would be present at the hearing only while testifying and should be permitted to testify only in the presence of the employee or his/her representatives and the City's representatives.
5. The appeal hearing will be held on the City's premises.
6. In conducting the appeal, the hearing officer's authority/jurisdiction shall be limited to reviewing the factual basis supporting the discipline and determining that the factual basis was reached honestly, after a fair, appropriate and procedurally correct investigation and for reasons that were not arbitrary, discriminatory or pretextual. Should the hearing officer, conducting the review specified above, affirm the factual basis for the discipline decision, he/she may not substitute his/her judgment for that of management's as to the level of discipline imposed. Should the hearing officer not affirm the factual basis for the discipline, the normal remedy will be to remand the matter to the decision level where the error occurred for reevaluation and/or correction consistent with the hearing officer's findings. In such a case, the hearing officer will have the authority to retain jurisdiction over the appeal to ensure compliance with the remand decision.
7. The cost of the hearing officer shall be borne by the City. The parties will share equally the cost of the court reporter and each side will bear their respective costs of representation.

28.9 Any decision of the City Manager shall be final and binding.

28.10 Judicial review of any decision rendered under this section shall be governed by Code of Civil Procedure section 1094.5

#### **Article XXIV –CITY RIGHTS**

29.1 It is further understood and agree between the parties that nothing contained in this statement of benefits shall be construed to waive or reduce any rights of the City, which include but are not limited to ,the exclusive rights to:

- Determine the mission of its constituent departments, commissions, and boards
- Set standards of service

- a Determine the procedures and standards of selection for employment
- a Direct its employees
- a Maintain the efficiency of governmental operations
- a Determine the methods, means, and personnel by which government operations are conducted
- a Take all necessary actions to carry out its mission in emergencies
- a Exercise complete control and discretion and the technology of performing its work.

City Rights also include the right to determine the procedures and standards of selection for promotion, to relieve employees from duty because of lack of work or other legitimate reasons, to make and enforce standards of conduct and discipline, and to determine the content of job classifications.

#### **ARTICLE XXX – DEPARTMENT SANCTIONED TEAMS**

- 30.1 It is the intent of the City to develop specialized teams to address a variety of special hazards and provide specialized services to the department or community. When a team is established, minimum standards for inclusion and retention as a team member shall be developed and ratified by the Fire Chief. Any member of the department who becomes a member of a recognized specialized team, shall receive a 2.5% salary increase for as long as he/she meets the minimum entry level requirements and maintains a minimum level of participation as outlined in the team membership requirements. Each employee of the department can only receive 2.5% of salary for team membership, regardless of the number of teams the employee belongs to.
- 30.2 Existing members of the Hazardous Materials Team shall remain members of the team and shall continue to receive the 2.5% salary increase. The three members of the department who meet the minimum requirements for inclusion on the Hazardous Material Team shall be able to join the team and receive the 2.5% salary increase upon ratification of this contract. However, no additional team members shall be assigned to the Hazardous Material Team until the membership falls below 12 members. There shall be a six month period for the team to develop acceptable performance standards for maintaining his/her membership on the team.
- 30.3 The development of new teams shall require the submittal of minimum entry level and performance criteria for maintenance of membership to the Fire Chief prior to the development of the team. The Fire Chief shall have the sole discretion as to the appropriate number of members per specialized team. The department shall make every effort to develop a cadre of specialized teams to adequately address the needs of its members.

## Schedule A

### Salary effective pay period in which July 1,2008 falls

	<b>Step A</b>	<b>Step B</b>	<b>Step C</b>	<b>Step D</b>	<b>Step E</b>
Fire Battalion Chief	\$7,119.01	\$7,474.96	\$7,848.71	\$8,241.14	\$8,653.20
Fire Division Chief	\$8,542.81	\$8,969.95	\$9,418.45	\$9,889.37	\$10,383.84
Fire Division Chief (Shift)	\$6,420.24	\$6,741.25	\$7,178.31	\$7,432.23	\$7,803.84